

E-Filing

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FILED

JUL 25 2005

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CENTER FOR BIOLOGICAL DIVERSITY, *et al.*,) Case No: C 04-1861 VRW

Plaintiffs,

v.

NORTON, *et al.*,

Federal Defendants,

and

AMERICAN FOREST & PAPER ASS'N, *et al.*,

Defendant-Intervenors.

STIPULATION OF DISMISSAL

and

~~[PROPOSED]~~ ORDER

1 By this action, which challenges Federal Defendants' February 14, 2003 12-month finding
 2 under Section 4(b)(3)(B) of the Endangered Species Act ("ESA"), 16 U.S.C. § 1533(b)(3)(B), that
 3 the California spotted owl does not warrant listing as a threatened or endangered species, Plaintiffs
 4 sought an order from this Court requiring Federal Defendants to prepare a new 12-month finding for
 5 the owl. On June 21, 2005, Federal Defendants published a finding under Section 4(b)(3)(A) of the
 6 ESA, 16 U.S.C. § 1533(b)(3)(A), for a new petition submitted by Plaintiffs on September 1, 2004,
 7 concluding that the new petition presented substantial scientific or commercial information
 8 indicating that listing the owl as threatened or endangered may be warranted. *See* 70 Fed. Reg.
 9 35,607. Accordingly, Federal Defendants have begun a review of owl's status and intend to make a
 10 new 12-month finding for the species as required by Section 4(b)(3)(B).

11 In light of the foregoing, the parties, by and through their undersigned counsel of record,
 12 hereby stipulate, subject to the Court's order, as follows:

13 1. In the interest of judicial economy, this case should be dismissed pursuant to Federal
 14 Rule of Civil Procedure 41(a)(1);

15 2. The Further Case Management Conference currently scheduled for July 26, 2005
 16 should be taken off calendar; and

17 3. The 14-day deadline for filing a motion for an award of attorneys' fees and costs
 18 under Federal Rule of Civil Procedure 54(d)(2)(B) and Civil Local Rule 54(a) should be extended by
 19 31 days so that Plaintiffs and Federal Defendants may meet and confer and attempt to settle the
 20 matter of the amount of attorneys' fees and costs, if any, payable to Plaintiffs in this case. Nothing
 21 in this Stipulation should be construed as a waiver of Federal Defendants' right to contest Plaintiffs'
 22 entitlement to attorneys' fees and costs in this case.
 23

24 Respectfully submitted,

25
 26 Dated: July 20, 2005

27 /s/
 28 GREGORY C. LOARIE
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13 LISA LYNNE RUSSELL, Assistant Chief

14 Dated: July 20, 2005

15 /s/ Kristen Byrnes Floom (approved 7/2/05)
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26 /s/ J. Michael Klise (approved 7/20/05)
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[PROPOSED] ORDER

Pursuant to the foregoing stipulation of the parties, IT IS ORDERED that this case is dismissed. The Further Case Management Conference currently scheduled for July 26, 2005 is taken off calendar. Plaintiffs shall have 45 days from the entry of this order to file any motion for attorneys' fees and costs, for resolution by this Court.

DATED: 28 JUL 2005


HON. VAUGHN R. WALKER
UNITED STATES DISTRICT JUDGE